

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on February 1, 1993 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: Bob McDanel, Board of Emergency Medical Services
Chip Wheelen, Kansas Medical Society
Tuck Duncan, Medevac Medical Services, Inc.
Mike Press, Emergency Medical Services of Johnson County
Mrs. Elaine Wilson, of Tecumseh (Individual)
Mrs. Neva Martin, of Tecumseh (Individual)

Others attending: See Guest List ([Attachment 1](#))

The Chairman opened the hearing on **HB 2103**, regarding emergency medical services and resuscitation orders.

Chip Wheelen, Kansas Medical Society, spoke as a proponent of the bill. He suggested amendments be made to Section 1 of the bill to clarify the language which specifies the kinds of Do Not Resuscitate (DNR) orders so that emergency personnel can rely upon the various documents and orders, and that there be some kind of standardization of such orders. (See his testimony, [Attachment 2](#)). He also distributed a packet of information on "Medical Directives," ([Attachment 3](#)).

Tuck Duncan, Medevac Medical Services, Inc., stated Medevac's support in the concept of **HB 2103**, and recommended the same limited immunity be given to the employing unit as is provided attendants (see [Attachment 4](#)). He outlined the problems encountered by attendants in determining authentic DNR orders, and support of the concept in the Kansas Medical Society's suggested amendments. He believes the issues of guardianship and conservator rights (K.S.A. 59-3018 and 65-8101), with respect to living wills and durable powers of attorney, needs review and possible amendments to the laws to make them clear and in agreement with each other. Mr. Duncan stated passage of **HB 2103** would resolve a number of problems encountered by attendants, especially with respect to nursing home and hospice patients.

Mike Press, Emergency Medical Services of Johnson County, stated his support of **HB 2103** ([Attachment 5](#)). He outlined the process utilized in Johnson County wherein physicians issue a standardized form to their patients stating the DNR order, which is signed by the patient and the physician, and upon which the EMS attendants can rely. Mr. Press also stated his support of the Kansas Medical Society's amendments to broaden immunity to the company.

Mrs. Elaine Wilson, of Tecumseh, presented testimony as to her family's experience with respect to resuscitation efforts made on her mother who had already passed away ([Attachment 6](#)).

Neva Martin, residing in Tecumseh, spoke about her experience with EMS personnel in obtaining transportation for her mother, who was unconscious at the time but who did not require emergency treatment (only transportation to the hospital). She recommended that education be given to the general public on the requirements of living wills and power of attorneys.

Several questions were asked by Committee members as to the statutes and their literal effects on emergency service personnel. Representative Holmes suggested that a standardized form should be researched as to its practicality. Chairman Brown then distributed to each member a copy of the written testimony she had received from Ralph Unger, Chairman of the Decatur County Commission, and Tom Pollan, Director of the Sedgwick County Emergency Medical Services, on **HB 2103**. (See [Attachments 7 and 8](#)).

The meeting was adjourned at 2:50 p.m. The next meeting is scheduled at 1:30 p.m., February 2, 1993, in Room 521-S of the State Capitol.

FEBRUARY 1, 1993

GUEST LIST

<u>NAME/address</u>	<u>ORGANIZATION</u>
Annette Sibert	KAHA, Topeka
Nora Martin	
Haberta Kuehl	
Cleta Renyer	Right to Life of Ks.
Alfred Hanson	AARP CCTF
Elaine Wilson	Jecumsch, KS.
George Goebel	AARP-SLC-CCTF
Bettie Sue Shumway	AARP-CCTF
Cameron Bruwer	KTLA
Michelle Zister	Kp. Gov. Consulting
Chip Wheelen	KS Medical Society
MICHAEL PRESS	JO. CO. MED-ACT
Tuck Duncan	Medevac Medical Services.
Gerry Ray	Johnson County Commission
John Conard	—
Janette Pucci	Board of Nursing
London SOB Topeka KS	
MIKE PRESS	EMS of JOHNSON COUNTY

ATTACHMENT 1
2-1-93

- 1 no health care provider or attendant, who ~~in good faith~~ causes or upon being presented with a do not resuscitate order
 2 participates in the withholding or withdrawing of cardiopulmonary or a medical directive
 3 resuscitation pursuant to a do not resuscitate order/shall be subject or a medical directive
 4 to criminal or civil liability or be found to have committed an act
 5 of unprofessional conduct.
- 6 As used in this section, ~~a do not resuscitate order shall be signed~~ mean a written instruction signed by the patient's
 7 ~~by the person making the order, or by another person in the presence~~ treating physician and medical directive shall mean:
 8 ~~of the person making the order and by the expressed direction of~~ (1) a living will executed in accordance with
 9 ~~the person making the order, and:~~ K.S.A. 65-28,103 and amendments thereto, or
 10 (1) ~~Signed in the presence of two or more witnesses at least 18~~ (2) instructions by a durable power of attorney
 11 ~~years of age neither of whom shall be the person who signed the~~ for health care decisions who has been appointed
 12 ~~order on behalf of and at the direction of the person making the~~ pursuant to K.S.A. 1992 Supp. 58-629 and
 13 ~~order, related to the person making the order by blood or marriage,~~ amendments thereto.
 14 ~~entitled to any portion of the estate of the person making the order~~
 15 ~~according to the laws of intestate succession of this state or under~~
 16 ~~any will of the person making the order or codicil thereto, or directly~~
 17 ~~financially responsible for the medical care of the person making~~
 18 ~~the order, or (2) signed by the person's attending physician.~~
- 19 A health care provider or attendant whose decision about the validity of the signed do not resuscitate order is made in good faith or medical directive
 20 is not subject to criminal or civil liability, or discipline for unpro-
 21 fessional conduct with respect to that decision.
- 22 Sec. 2. K.S.A. 65-6124 is hereby repealed.
 23 Sec. 3. This act shall take effect and be in force from and after
 24 its publication in the statute book.
 25

amendments drafted by Chip Wheelen, KMS, 1/28/93

ATTACHMENT 2
2-1-93

MEDICAL DIRECTIVES

Living Will

Durable Power of Attorney for Health Care Decisions

Prepared and Distributed by

**Kansas Medical Society
623 W 10th Ave.
Topeka, Kansas 66612
913-235-2383**

and

**KaMMCO
Kansas Medical Mutual Insurance Company
623 W 10th Ave.
Topeka, Kansas 66612
913-232-2224**

*ATTACHMENT 3-1
2-1-93*

GENERAL INFORMATION FOR MEDICAL DIRECTIVES

Medical directives are legally recognized documents which allow you to have control over health care decisions even though you may no longer be capable of communicating your wishes. Kansas recognizes two types of medical directives, the Living Will and the Durable Power of Attorney for Health Care Decisions. Living Wills are designed to allow you to express your wishes regarding life sustaining treatment when there is a terminal condition and when the treatment merely prolongs death. The Durable Power of Attorney for Health Care Decisions is designed to allow you to appoint an agent, a person of your choice, to make health care decisions for you in the event you are unable to make or communicate your wishes regarding treatment. Your agent can consent to treatment or can refuse treatment on your behalf. You may have either type of directive, or both.

In considering medical directives, consultation with your personal physician is a suitable beginning. Together, you and your physician can discuss your general health, the general prospects for future illnesses, and range of treatments. Your physician can also educate you regarding the specific nature of various treatments. This education will enable you to decide whether you would want a particular type of treatment.

If you chose to have a Durable Power of Attorney for Health Care Decisions, you should name an agent who knows your values and goals relating to treatment and whom you trust to carry out your wishes. This agent does not have to be a family member, but you may chose a family member to be your agent if you like. Talk with your agent about your wishes and confirm that he or she is willing to act on your behalf.

It is also important to discuss your medical directives with a close relative or trusted friend so that someone is aware of your wishes should an unforeseen situation arise. Consultation with an attorney may also be desirable to assure legal complications are avoided, however, it is not mandatory.

If you decide to have a medical directive, provide copies to your personal physician, a family member or friend, your agent, your legal advisor and to the hospital or nursing home. Because hospitals make a new chart for each admission and your previous charts may not be available, you must give a copy of your medical directive to the hospital each time you are admitted.

You may change or revoke your medical directive at any time. Durable Powers of Attorney for Health Care Decisions are revoked by writing a statement that the document is revoked. The statement must be witnessed or notarized. Living Wills may be revoked by destroying the document, signing a written revocation, or verbally. If you tell someone that you want your Living Will revoked, that person must confirm the revocation in writing and give it to your physician. Each person or institution that has a copy of your medical directive should be notified whenever there is a change or revocation.

Forms for a Living Will and a Durable Power of Attorney for Health Care Decisions are included with this brochure.

LIVING WILL DECLARATION

Declaration made this ____ day of _____.
(month, year)

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally capable to make this declaration.

Declarant's Signature _____
Address _____

The declarant has been personally known to me and I believe him or her to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness _____
Address _____

Witness _____
Address _____

ATTACHMENT 3-3
2-1-93

**DURABLE POWER OF ATTORNEY FOR
HEALTH CARE DECISIONS**

CREATION OF DURABLE POWER OF ATTORNEY

I, _____, designate and appoint:

Name _____

Address _____

Telephone Number _____

as my agent for health care decisions for me as authorized in this document. (This person cannot be a health care provider or an employee, owner, director or officer of a health care provider unless related to you or a member of the same religious community bound by vows).

GENERAL STATEMENT OF AUTHORITY GRANTED

Pursuant to the language stated below, on my behalf my agent may:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

(2) Make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution, employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and

(3) Request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above, my agent for health care decisions shall: (here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted):

LIMITATIONS OF AUTHORITY

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

(3) This durable power of attorney for health care decisions shall be subject of the additional following limitations:

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EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (initial one):

- _____ immediately, and shall not be affected by my subsequent disability, incapacity or death; or
_____ upon the occurrence of my disability or incapacity as defined in K.S.A. 59-3002 and determined by my attending physician.

REVOCATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked. (This durable power of attorney for health care decisions may be revoked by any instrument in writing executed, witnessed or acknowledged in the same manner as this document).

EXECUTION

Executed this _____ day of _____ at
(month, year)

Principal's Signature _____

This document must be: witnessed by two individuals, OR acknowledged by a notary public.

(1) **Witnesses** - two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care:

Witness _____
Address _____

Witness _____
Address _____

OR (2) Notary Public

STATE OF _____ ss:
COUNTY OF _____

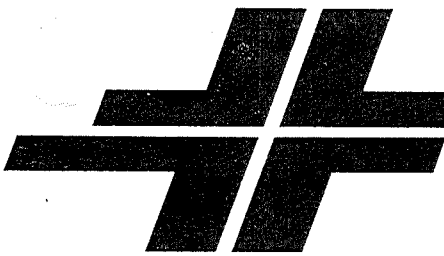
This instrument was acknowledged before me this _____ day of _____
(month, year)
by _____
(name of person)

(SEAL)

Signature of Notary

My appointment expires: _____

ATTACHMENT 3-5
2-1-93



MEDEVAC MEDICAL SERVICES, INC.®

411 S.W. Jackson • Topeka, Kansas 66603 • (913) 233-2400 Administration

February 1, 1993

TO: House Committee on Local Government

FROM: R. E. "Tuck" Duncan
General Counsel for
Medevac Medical Services

RE: HB 2103

Medevac Medical Services supports, in concept, House Bill 2103, an act relating to do not resuscitate (DNR) orders which provides that health care providers or emergency medical services (EMS) personnel will not be subject to certain liabilities or discipline for unprofessional conduct when a good faith decision is made regarding implementation of a DNR order. Some terminology might need be devised to distinguish this order from the hospital-context DNR order. Medevac concurs with the recommendation of the Special Committee on Judiciary and the conclusions reached by the Committee and reflected in the Report on Kansas Legislative Interim Studies to the 1992 Legislature at page 170. EMS personnel often must make care decisions in a matter of seconds, and HB 2103 reflects a prudent approach to meeting the needs of these personnel "in the field." However, the Legislature should also provide the same limited immunity that it grants to the attendants to the employing unit: city, county or private employer. Thank you for your kind attention to and consideration of this matter.

House Bill 2103
Committee on Local Government
Testimony of Michael B. Press

Honorable members of the Local Government Committee, my name is Mike Press and I am the Director of Emergency Medical Services in Johnson County. I appear before you today to speak in support of H.B. 2103, which deals with liability of emergency services personnel who, in good faith, honor a patient's wishes to withhold life-sustaining treatment..

Emergency care providers are often summoned to scenes where the patient, family, physician, and clergy have previously discussed and decided that resuscitation efforts are not desired. However, at the time a patient stops breathing, someone will dial the emergency service agency, often just as information that a patient has expired. This generates an emergency response and creates a difficult situation for the family and emergency provider alike. The family will advise that they didn't know what else to do other than dial the emergency number, but is aware and supportive of the patient's advance directive and does not wish any care to be provided. The emergency provider, under the pressure to respond and act, must make a very difficult decision in an emergency environment as to whether to provide care, which would be a typical response, or to withhold care based on an advanced directive and the family's wishes. Obviously, this is a less than ideal situation for emergency services providers.

H.B. 2103 helps alleviate much of this difficulty by providing guidance to emergency services personnel in such situations. The ability to abide by the patient's and family's wishes to withhold care based on following the directives of a legal document, without fear of legal or professional consequences when acting in good faith, will remove much of the dilemma many emergency services professionals face on these types of situations.

ATTACHMENT 5
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House bill 2103 is of vital importance to our family due to an unfortunate experience when our Mother died. She had been dead for about 20 minutes when the ambulance arrived. Instead of taking her back to town, all of the life saving procedures were administered over the objections of my brother and sister-in-law who had a copy of her living will. The ambulance personnel said they did not recognize the living will and needed a DNR form which we had never heard of. To make a long story short it was a very traumatic experience for our whole family.

In researching the 'DNR form' we found there is much confusion as to what it is; who needs it; when they are honored; who informs people about them; where do you get them; and last but not least where are they good, for instance we are told every county has their own set of rules and you are treated by whatever county you are in. We were first told everyone needs a DNR form, then that the forms were only good for people in nursing homes, and finally that it was only good for people who had terminal illness. Under that ruling our Mother would not have qualified since her heart just quit beating.

We feel there should be some clear direction through out the state of Kansas and even nationwide to prevent these things from happening. Our personal opinions are that the EMT's used our Mother to practice on and then collected money for it. We find this happens more often than you or anyone else realized. We know of five families which have been spared this because we chose to speak up.

Because of this experience we have also discovered that power of attorney documents don't necessarily do what they were intended to do when they were written. Older people have made out the POA's when they were competent and were told they would cover all phases of there lives. Then ten years later they have become afflicted with some form of dementia where they can no longer make decisions and the state comes along with a law tht says you have to have the word medical or health decisions written in the POA. The families only recourse is to have the loved one declared incompetent and be declared guardian, an unnecessary expense and indignity to that loved one in my opinion.

I thank you for letting me speak to you and do hope your committee will strongly consider some way for these procedures to be unified, make it easier for families of these loved ones to relay the wishes of those not able to and that other families will not have to suffer the forever images of the uncalled treatment of people they love.

Elaine Wilson

8116 E Hwy 40

Secumseh Mo 66542

ATTACHMENT 6
2-1-93

Ph. 379-5331

County Of Decatur

Herschel B. Betts
Doyle B. Brown
Ralph D. Unger
Commissioners
913-475-2922

Marilyn Horn
County Clerk
913-475-2132

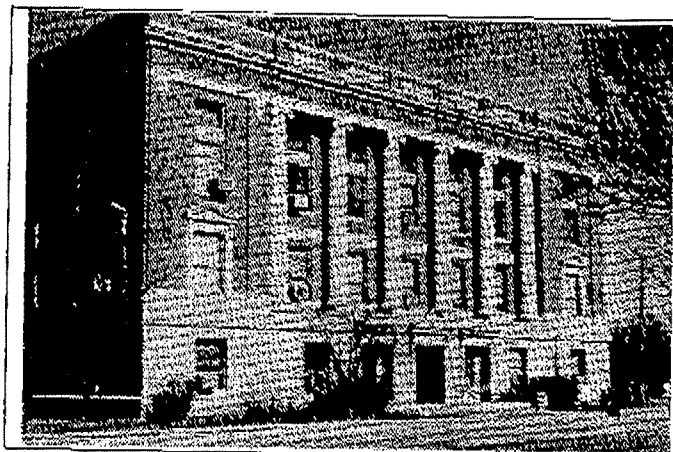
Pat Fringer
County Treasurer
913-475-2521

Steven W. Hirsch
County Attorney
913-475-3082

Ken Badsky
County Sheriff
913-475-3884

Patricia M. Whetzel
Register Of Deeds
913-475-3051

John Barrett
Ambulance Director
913-475-2132



John E. Bremer
Magistrate Judge
913-475-3161

Charlotte Meints
Clerk Of The District Court
913-475-2932

Bob Keenan
Road Supervisor
913-475-3041

Charles F. Votapka
County Weed Director
913-475-3094

Eugene W. Wurm
County Appraiser
913-475-2627

Dean Aldridge
County Health Nurse
913-475-3090

Jeanne Pachner
Chief Dispatcher
913-475-3884

P. O. Box 28, Oberlin, Kansas 67749-0028

February 1, 1993

Local Government Committee
House of Representatives
183 West - State Capitol
Topeka, KS 66612

ATTN: Representative Nancy Brown, Chair Person

RE: HB 2102 (Ambulance Attendants)
HB 2103 (DNR Orders, Liability Protection)
HB 2104 (EMS Training)

I request House Local Government Committee to recommend the passage of the aforementioned bills as introduced, to provide the necessary changes in legislation which will enhance Emergency Medical Services in Kansas.

I encourage your favorable action on behalf of both the Decatur County Commission as well as the Board of Emergency Medical Services of the State of Kansas. I am privileged to currently serve as Chairman of both of these Boards.

Thank you for your attention to these three areas of concern.

Respectively yours,

Ralph D. Unger, Chairman
Decatur County Commission

ATTACHMENT 7
2-1-93

**SEDGWICK COUNTY, KANSAS****EMERGENCY MEDICAL SERVICES**

OFFICE OF THE DIRECTOR

538 N. MAIN
WICHITA, KANSAS 67203-3754
(316) 383-7239

To: Chairperson Brown and Honorable Members of the House
Committee on Local Government

From: Tom Pollan, Director

Date: February 1, 1993

Re: House Bill #2103 (Do-Not-Resuscitate Orders)

First, allow me to apologize for not being able to attend your hearing on Do-Not-Resuscitate (DNR's) Orders. I will forward the following as my testimony.

As you're aware for three years EMS providers have been attempting to gain State recognition to allow EMS personnel to follow the medical directives of our patients. I believe HB #2103, with the amendments offered by the Kansas Medical Society, will allow those medical directives to occur. Therefore, I support HB #2103 with the inclusion of the amendments offered by the Kansas Medical Society.

The only question that I have is, what form must the DNR be in and how must it be presented? For example, the Living Will and Durable Power of Attorney for Health Care Decisions must be in writing and presented to the health care provider (Patient must not be able to communicate their decisions) before they are in effect. Does this statute require DNR's to be in writing and must it be presented to EMS personnel before it's in effect? Or will another health care provider be able to just tell EMS personnel that a DNR exist? I urge you to consider requiring that DNR's be in writing and presented to EMS personnel, at the time of decision, for a DNR to be in effect. This will ensure that this decision is not a last second decision when a Physician is not present to confirm the patients condition.

Thank you for your time and consideration of this issue. Should you have any questions, please feel free to contact me.

Sincerely,

T. W. Pollan
Director

ATTACHMENT 8

2-1-93